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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

THOMAS W. NOLDE,)	CASE NO. 3:06 CV 1260
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
ERNIE MOORE,)	<u>AND ORDER</u>
)	
Respondent.)	

On May 19, 2006, petitioner pro se Thomas W. Nolde filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Nolde is incarcerated in an Ohio correctional institution, having been convicted of rape (2 counts) and gross sexual imposition (5 counts), pursuant to a guilty plea, in February 2001. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

As grounds for relief, petitioner asserts that his sentence violates the principles set forth in United States v.

Booker, 543 U.S. 220 (2005) and Blakely v. Washington, 542 U.S. 296 (2004), and that the indictment was defective. The petition reflects Nolde sought to raise these issues in postconviction motions in the Ohio courts.

Without the regard to the merits of Nolde's assertions, the timeliness of the petition, or to the issue of procedural default, it is evident on the face of the petition that he has yet to appeal his sentence, an avenue still available to him under Ohio Appellate Rule 5. His petition is thus, at the very least, premature.

Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the petition is denied and this case is dismissed without prejudice. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.



DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE